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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

FRED HEIDARPOUR AND SIDNEY ) Case No.  
NAIMAN individually and on behalf of )  
all others similarly situated, )

Plaintiffs, )

vs. )

WEST CLARA FUNDING LLC.; and )  
DOES 1 through 10, inclusive, )  
Defendant. )

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
OF:**

1. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]

**DEMAND FOR JURY TRIAL**

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1 Plaintiffs FRED HEIDARPOUR AND SIDNEY NAIMAN (“Plaintiffs”),  
2 individually and on behalf of all others similarly situated, alleges the following  
3 upon information and belief based upon personal knowledge:

#### 4 **NATURE OF THE CASE**

5 1. Plaintiffs brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of WEST CLARA FUNDING LLC.  
8 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiffs on  
9 Plaintiffs’ cellular telephone in violation of the Telephone Consumer Protection  
10 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the  
11 National Do-Not-Call provisions, thereby invading Plaintiffs’ privacy.

#### 12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs,  
14 an individual residing in California, seeks relief on behalf of a Class, which will  
15 result in at least one class member belonging to a different state than that of  
16 Defendant, a New York company. Plaintiffs also seeks up to \$1,500.00 in damages  
17 for each call in violation of the TCPA, which, when aggregated among a proposed  
18 class in the thousands, exceeds the \$5,000,000.00 threshold for federal court  
19 jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under  
20 the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
21 jurisdiction.

22 3. Venue is proper in the United States District Court for the Northern  
23 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Plaintiffs reside  
24 within the State of California.

#### 25 **PARTIES**

26 4. Plaintiff, FRED HEIDARPOUR (“Plaintiff”), is a natural person  
27 residing in Contra Costa County, California and is a “person” as defined by 47  
28 U.S.C. § 153 (39).

1           5. Plaintiff SIDNEY NAIMAN (“Plaintiff”), is a natural person residing  
2 in California is a “person” as defined by 47 U.S.C. § 153 (39).

3           6. Defendant, WEST CLARA FUNDING LLC. (“DEFENDANT”), is an  
4 entity in the insurance industry, and is a “person” as defined by 47 U.S.C. § 153  
5 (39).

6           7. The above-named Defendant, and its subsidiaries and agents, are  
7 collectively referred to as “Defendants.” The true names and capacities of the  
8 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
9 currently unknown to Plaintiffs, who therefore sues such Defendants by fictitious  
10 names. Each of the Defendants designated herein as a DOE is legally responsible  
11 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend  
12 the Complaint to reflect the true names and capacities of the DOE Defendants when  
13 such identities become known.

14           8. Plaintiffs are informed and believe that at all relevant times, each and  
15 every Defendant were acting as an agent and/or employee of each of the other  
16 Defendants and was acting within the course and scope of said agency and/or  
17 employment with the full knowledge and consent of each of the other Defendants.  
18 Plaintiffs is informed and believes that each of the acts and/or omissions  
19 complained of herein was made known to, and ratified by, each of the other  
20 Defendants.

### 21                                   **FACTUAL ALLEGATIONS**

22           9. Beginning in or around November of 2019, Defendant contacted  
23 Plaintiff Fred Heidarpour’s cellular telephone number ending in -5903 multiple  
24 times in an attempt to solicit Plaintiff to purchase Defendant’s services.

25           10. Beginning in or around October of 2019, Defendant contacted  
26 Plaintiff Sidney Naiman’s cellular telephone number ending in -5502 in an attempt  
27 to solicit Plaintiff to purchase Defendant’s services.

28           11. Defendant used an “automatic telephone dialing system” as defined

1 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiffs seeking to solicit its services.

2 12. Defendant contacted or attempted to contact Plaintiffs from telephone  
3 number (866)986-3586 belonging to Defendant.

4 13. Defendant's calls constituted calls that were not for emergency  
5 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

6 14. Defendant's calls were placed to telephone number assigned to a  
7 cellular telephone service for which Plaintiffs incurs a charge for incoming calls  
8 pursuant to 47 U.S.C. § 227(b)(1).

9 15. During all relevant times, Defendant did not possess Plaintiffs' "prior  
10 express consent" to receive calls using an automatic telephone dialing system or an  
11 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §  
12 227(b)(1)(A).

13 16. Furthermore, Plaintiffs' cellular telephone numbers have been on the  
14 National Do-Not-Call Registry well over thirty (30) days prior to Defendant's  
15 initial calls.

16 17. Despite this, Defendant continued to call Plaintiffs in an attempt to  
17 solicit its services and in violation of the National Do-Not-Call provisions of the  
18 TCPA.

19 18. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
20 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

21 19. Plaintiffs received numerous solicitation calls from Defendant within  
22 a 12-month period.

23 20. Despite this, Defendant continued to call Plaintiffs in an attempt to  
24 solicit its services and in violation of the National Do-Not-Call provisions of the  
25 TCPA.

26 21. Upon information and belief and based on Plaintiffs' experiences of  
27 being called by Defendant, and at all relevant times, Defendant failed to establish  
28 and implement reasonable practices and procedures to effectively prevent

1 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §  
2 227(c)(5).

3 **CLASS ALLEGATIONS**

4 22. Plaintiffs bring this action individually and on behalf of all others  
5 similarly situated, as a member the four proposed classes (hereafter, jointly, “The  
6 Classes”). The class concerning the ATDS claim for no prior express consent  
7 (hereafter “The ATDS Class”) is defined as follows:

8 All persons within the United States who received any  
9 solicitation/telemarketing telephone calls from  
10 Defendant to said person’s cellular telephone made  
11 through the use of any automatic telephone dialing  
12 system or an artificial or prerecorded voice and such  
13 person had not previously consented to receiving such  
14 calls within the four years prior to the filing of this  
Complaint

15 23. The class concerning the National Do-Not-Call violation (hereafter  
16 “The DNC Class”) is defined as follows:

17 All persons within the United States registered on the  
18 National Do-Not-Call Registry for at least 30 days, who  
19 had not granted Defendant prior express consent nor had  
20 a prior established business relationship, who received  
21 more than one call made by or on behalf of Defendant  
22 that promoted Defendant’s products or services, within  
23 any twelve-month period, within four years prior to the  
filing of the complaint.

24 24. Plaintiffs represent, and are members of, The ATDS Class, consisting  
25 of all persons within the United States who received any solicitation telephone calls  
26 from Defendant to said person’s cellular telephone made through the use of any  
27 automatic telephone dialing system or an artificial or prerecorded voice and such  
28 person had not previously not provided their cellular telephone number to

1 Defendant within the four years prior to the filing of this Complaint.

2 25. Plaintiffs represent, and are members of, The DNC Class, consisting  
3 of all persons within the United States registered on the National Do-Not-Call  
4 Registry for at least 30 days, who had not granted Defendant prior express consent  
5 nor had a prior established business relationship, who received more than one call  
6 made by or on behalf of Defendant that promoted Defendant's products or services,  
7 within any twelve-month period, within four years prior to the filing of the  
8 complaint.

9 26. Defendant, their employees and agents are excluded from The  
10 Classes. Plaintiffs does not know the number of members in The Classes, but  
11 believes the Classes members number in the thousands, if not more. Thus, this  
12 matter should be certified as a Class Action to assist in the expeditious litigation of  
13 the matter.

14 27. The Classes are so numerous that the individual joinder of all of its  
15 members is impractical. While the exact number and identities of The Classes  
16 members are unknown to Plaintiffs at this time and can only be ascertained through  
17 appropriate discovery, Plaintiffs is informed and believes and thereon alleges that  
18 The Classes includes thousands of members. Plaintiffs alleges that The Classes  
19 members may be ascertained by the records maintained by Defendant.

20 28. Plaintiffs and members of The ATDS Class were harmed by the acts  
21 of Defendant in at least the following ways: Defendant illegally contacted Plaintiffs  
22 and ATDS Class members via their cellular telephones thereby causing Plaintiffs  
23 and ATDS Class members to incur certain charges or reduced telephone time for  
24 which Plaintiffs and ATDS Class had previously paid by having to retrieve or  
25 administer messages left by Defendant during those illegal calls, and invading the  
26 privacy of said Plaintiffs and ATDS Class.

27 29. Common questions of fact and law exist as to all members of The  
28 ATDS Class which predominate over any questions affecting only individual

1 members of The ATDS Class. These common legal and factual questions, which  
2 do not vary between ATDS Class members, and which may be determined without  
3 reference to the individual circumstances of any ATDS Class members, include,  
4 but are not limited to, the following:

- 5 a. Whether, within the four years prior to the filing of this  
6 Complaint, Defendant made any telemarketing/solicitation call  
7 (other than a call made for emergency purposes or made with  
8 the prior express consent of the called party) to a ATDS Class  
9 member using any automatic telephone dialing system or any  
10 artificial or prerecorded voice to any telephone number  
11 assigned to a cellular telephone service;
- 12 b. Whether Plaintiffs and the ATDS Class members were  
13 damaged thereby, and the extent of damages for such violation;  
14 and
- 15 c. Whether Defendant and their agents should be enjoined from  
16 engaging in such conduct in the future.

17 30. As a person that received numerous telemarketing/solicitation calls  
18 from Defendant using an automatic telephone dialing system or an artificial or  
19 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs is asserting  
20 claims that are typical of The ATDS Class.

21 31. Plaintiffs and members of The DNC Class were harmed by the acts of  
22 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs  
23 and The DNC Class members via their telephones for solicitation purposes, thereby  
24 invading the privacy of said Plaintiffs and The DNC Class members whose  
25 telephone numbers were on the National Do-Not-Call Registry. Plaintiffs and The  
26 DNC Class members were damaged thereby.

27 32. Common questions of fact and law exist as to all members of The  
28 DNC Class which predominate over any questions affecting only individual

1 members of The DNC Class. These common legal and factual questions, which do  
2 not vary between DNC Class members, and which may be determined without  
3 reference to the individual circumstances of any DNC Class members, include, but  
4 are not limited to, the following:

- 5 a. Whether, within the four years prior to the filing of this  
6 Complaint, Defendant or its agents placed more than one  
7 solicitation call to the members of the DNC Class whose  
8 telephone numbers were on the National Do-Not-Call Registry  
9 and who had not granted prior express consent to Defendant and  
10 did not have an established business relationship with  
11 Defendant;
- 12 b. Whether Defendant obtained prior express written consent to  
13 place solicitation calls to Plaintiffs or the DNC Class members'  
14 telephones;
- 15 c. Whether Plaintiffs and the DNC Class member were damaged  
16 thereby, and the extent of damages for such violation; and
- 17 d. Whether Defendant and their agents should be enjoined from  
18 engaging in such conduct in the future.

19 33. As a person that received numerous solicitation calls from Defendant  
20 within a 12-month period, who had not granted Defendant prior express consent  
21 and did not have an established business relationship with Defendant, Plaintiffs is  
22 asserting claims that are typical of the DNC Class.

23 34. Plaintiffs will fairly and adequately protect the interests of the  
24 members of The Classes. Plaintiffs has retained attorneys experienced in the  
25 prosecution of class actions.

26 35. A class action is superior to other available methods of fair and  
27 efficient adjudication of this controversy, since individual litigation of the claims  
28 of all Classes members is impracticable. Even if every Classes member could



1 afford individual litigation, the court system could not. It would be unduly  
 2 burdensome to the courts in which individual litigation of numerous issues would  
 3 proceed. Individualized litigation would also present the potential for varying,  
 4 inconsistent, or contradictory judgments and would magnify the delay and expense  
 5 to all parties and to the court system resulting from multiple trials of the same  
 6 complex factual issues. By contrast, the conduct of this action as a class action  
 7 presents fewer management difficulties, conserves the resources of the parties and  
 8 of the court system, and protects the rights of each Classes member.

9 36. The prosecution of separate actions by individual Classes members  
 10 would create a risk of adjudications with respect to them that would, as a practical  
 11 matter, be dispositive of the interests of the other Classes members not parties to  
 12 such adjudications or that would substantially impair or impede the ability of such  
 13 non-party Class members to protect their interests.

14 37. Defendant have acted or refused to act in respects generally applicable  
 15 to The Classes, thereby making appropriate final and injunctive relief with regard  
 16 to the members of the Classes as a whole.

### 17 **FIRST CAUSE OF ACTION**

#### 18 **Negligent Violations of the Telephone Consumer Protection Act**

19 **47 U.S.C. §227(b).**

#### 20 **On Behalf of the ATDS Class**

21 38. Plaintiffs repeat and incorporate by reference into this cause of action  
 22 the allegations set forth above at Paragraphs 1-37.

23 39. The foregoing acts and omissions of Defendant constitute numerous  
 24 and multiple negligent violations of the TCPA, including but not limited to each  
 25 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular  
 26 *47 U.S.C. § 227 (b)(1)(A)*.

27 40. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,  
 28 Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory

1 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

2 41. Plaintiffs and the ATDS Class members are also entitled to and seek  
3 injunctive relief prohibiting such conduct in the future.

4  
5 **SECOND CAUSE OF ACTION**

6 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
7 **Act**

8 **47 U.S.C. §227(b)**

9 **On Behalf of The ATDS Class**

10 42. Plaintiffs repeat and incorporate by reference into this cause of action  
11 the allegations set forth above at Paragraphs 1-41.

12 43. The foregoing acts and omissions of Defendant constitute numerous  
13 and multiple knowing and/or willful violations of the TCPA, including but not  
14 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,  
15 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

16 44. As a result of Defendant's knowing and/or willful violations of *47*  
17 *U.S.C. § 227(b)*, Plaintiffs and the ATDS Class members are entitled an award of  
18 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
19 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

20 45. Plaintiffs and the Class members are also entitled to and seek  
21 injunctive relief prohibiting such conduct in the future.

22  
23 **THIRD CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**

25 **47 U.S.C. §227(c)**

26 **On Behalf of the DNC Class**

27 46. Plaintiffs repeat and incorporate by reference into this cause of action  
28 the allegations set forth above at Paragraphs 1-45.

47. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

48. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiffs and The DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

49. Plaintiffs and The DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

#### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection**

#### **Act**

#### **47 U.S.C. §227 et seq.**

#### **On Behalf of The DNC Class**

50. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-49.

51. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

52. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiffs and The DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

53. Plaintiffs and The DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

///

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiffs and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiffs and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

**THIRD CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiffs and The DNC Class members are entitled to

and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).

- Any and all other relief that the Court deems just and proper.

#### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection**

#### **Act**

#### **47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiffs and The DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

#### **JURY DEMAND**

54. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demands, a trial by jury.

Respectfully submitted this 21st Day of April, 2020.

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By: /s/ Todd M. Friedman  
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